Supreme Court, U.S.
FILED
FEB 11 1986
JOSEPH F. SPANIOL, JR.
CLERK

85-1456

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

JOHN R. GADD, Petitioner

vs.

NEWS-PRESS PUBLISHING COMPANY, a Florida corporation, d/b/a FORT MYERS NEWS-PRESS; PAUL FLYNN, President and Publisher of News-Press Publishing Company; RONALD THORNBURG, Editor in Chief of Fort Myers News-Press; GEORGE R. BLAKE, Executive Editor of Fort Myers New-Press; BARBARA JOHNSON; LEROY MELSEK, JR.; and KAREN BAIR, Respondents

On Writ of Certiorari to the District Court of Appeals of the State of Florida In and For the Second District

Petition for Writ of Certiorari

Thomas M. Brondstetter, Esquire
Thomas M. Brondstetter, P.A.
Post Office Box 2397
Fort Myers, Florida 33902
(813) 337-0330
Attorney for Petitioner

QUESTIONS PRESENTED

I

Whether the Appellate Court and Trial Court below properly applied the standards associated with the protection provided by the First and Fourteenth Amendments to the Constitution of the United States as applied to statements reported by the Respondents emanating from reports of judicial proceedings instituted by the Respondents wherein it is alleged said statements were not only false, but were deliberately concocted by the Respondents.

II

Whether the Appellate Court and Trial Court below, properly applied the protections emanating from the First and Fourteenth Amendments to the Constitution of the United States of America, in affirming and upholding the

dismissal of Plaintiff's defamation suit, in regard to the reports of statements attributable to a public official which were alleged to be false, and wherein it was further alleged that the Respondents actually knew of the falsity of the statements or acted in conscious disregard of such falsity.

III

Whether or not the Appellate Court erred in upholding the Trial Court's dismissal of certain causes of action which admittedly were based upon State law by the mistaken application of the protections provided by the First and Fourteenth Amendments to the Constitution of the United States of America wherein the defenses raised by the Respondents herein were so interwoven with the Federal issues presented by their defenses based upon the aforementioned First and Fourteenth

Amendments protections, that these causes of action were dismissed based upon the Federal issues.

I THE PARTIES

The Petitioner is John Gadd, the former President and Executive Officer of Lee Memorial Hospital and will be referred to, throughout the remainder of this Petition, as Petitioner. The Respondent, News-Press Publishing Company, d/b/a Fort Myers News-Press is a Florida corporation engaged in the business of publishing a newspaper of general circulation in several counties in the State of Florida and will be referred to throughout the remainder of this Petition as Respondent News-Press. The Respondent, Paul Flynn, was the President and Publisher of the News-Press, during the time periods involved herein, and will be referred to throughout the remainder of this Petition as Respondent

Flynn. The Respondent, Ronald Thornburg was, at all times herein material, the Editor of the News-Press and will be referred to throughout the remainder of this Petition as Respondent Thornburg. The Respondent, George R. Blake, was at all times material herein the Executive Editor of the News-Press and will be referred to throughout the remainder of this Petition as Respondent Blake. The Respondent, Barbara Johnson, was, at all times material herein, a Reporter for the News-Press and will be referred to throughout the remainder of this Petition as Respondent Johnson. The Respondent, LeRoy Melsek, Jr., was, at all times material herein, a Reporter for the News-Press and will be referred to throughout the remainder of this Petition as Respondent Melsek. The Respondent, Karen Bair, was at all times material herein, a Reporter for the News-Press and

will be referred to throughout the remainder of this Petition as Respondent Bair. The term Respondents as used throughout the remainder of this Petition will refer to all of the aforementioned individual Respondents in the collective. The preceding discussion constitutes a list of all the parties.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

JOHN R. GADD, the Petitioner herein, prays that a Writ of Certiorari issue to review the Opinion and Mandate of the District Court of Appeal of Florida, Second District, entered in the above-entitled case on November 13, 1985 and December 4, 1985 respectfully.

OPINIONS BELOW

The Opinion of the District Court of Appeal of Florida, Second District, was entered on November 13, 1985. The Opinion has not been reported yet. A copy of the Opinion is included in the separate appendix to this Petition, page

A-1. The District Court of Appeal of Florida, Second District, entered its Mandate in this matter on December 4, 1985. The Mandate has not been reported. A copy of said Mandate is included in the separate Appendix A page A-3. The abovementioned Opinion was a Per Curiam affirmance of an Order dismissing Petitioner's Amended Complaint and granting Respondents' Motion For Summary Judgment entered in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida, on January 31, 1985. The Order of the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida has not been reported. A copy of this Order appears in Appendix A, page A-5 to this Petition. The Order

entered by the Trial Court was without leave to amend and incorporated by reference the substantial rulings of law contained in said Trial Court's Order dismissing the Petitioner's original Complaint which was entered on August 8, 1984. A copy of the Trial Court's original Order appears in Appendix A, page A-9 to this Petition.

JURISDICTION

The opinion of the District Court of Appeal of Florida, Second District, was entered on November 13, 1985. The jurisdiction of this court is invoked pursuant to 28 U.S.C. Section 1257 (3) U.S.C.A.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the protection afforded to members of the media based upon the First and Fourteenth Amendments to the Constitution of the United States of America, said Constitutional Amendments provides as follows:

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting free exercise as thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

AMENDMENT XIV

Section 1. ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of like, liberty, or property, without due process of law; nor deny to any person with in its jurisdiction the equal protection of the laws.

STATEMENT OF CASE

The action below was instituted by the filing by the Petitioner of a Complaint on November 30, 1983; (R 1-203).[1] The Complaint contained four counts relating to causes of action for conspiracy to interfere and the actual interference with a contract and/or business/employment relationship, as well as twenty-four (24) counts relating to causes of action for conspiracy to libel or for actual libel. The original Complaint was dismissed with leave to amend by an order of the Trial Court entered on August 9, 1984 (R 338-342, A-8).[2]

An Amended Complaint was filed containing one count for the intentional interference with a contract and/or a business/employment relationship, one count for conspiracy to intentionally interfere with a contract and/or a

business/employment relationship, nine counts for libel and nine counts for conspiracy to libel (R 346-587). Counts I, II and IX through XX of the Amended Complaint were dismissed without leave to amend pursuant to an Order entered by the Trial Court on January 31, 1985 (R 681-683, A-3). The Trial Court also granted a Motion for Summary Judgment with regard to Counts III through VIII of the Amended Complaint (R 681-683, A-5).

In entering this final order dismissing the Amended Complaint and granting the Motion for Summary Judgment, the Trial Court enunciated its rulings of law and specifically incorporated its prior rulings of law as listed in its original Order dismissing the original Complaint (R 338-342, 681-683, A-5).

[1]As contained herein, R denotes the page number of the record certified to the Appellate Court below.

The factual allegations of the Petitioner's Amended Complaint established that the Respondents set about on a course of action intended and designed to cause the Petitioner's employer, Lee Memorial Hospital, to terminate his relationship with said employer (R 347-356). These actions included the writing and publishing of numerous, inaccurate and false articles and headlines pertaining to the Petitioner while the Respondents knew that the statements and information contained in said articles and headlines were in fact false and had within their possession information that established the falsity of said statements and information (R 355). The Respondents conduct also included the filing of three lawsuits, one of which included within it, as a

[2]A denotes the Appendix A and page number of the Petition.

basis for filing said lawsuit, false statements given by Respondent Johnson contained in a verified PETITION FOR MANDAMUS whereby Respondent Johnson stated:

> "the News-Press on Monday sued John Gadd, President of Lee Memorial Hospital, for refusing to allow a reporter to inspect hospital records in violation of Florida's Public Records Act.... The suit states the News-Press has exhausted its Administrative ways to obtain the Hospitals records and that Gadd has unreasonable, unequivocally and categorically denied the News-Press access to its records." (R 350-351)

This statement was then reported in a newspaper article published by the Respondent News-Press, despite the fact that Respondent Johnson knew that she had not even spoken to Petitioner and when in fact the Petitioner had not in any way denied her or the Respondent News-Press access to any of the records in question R 350, 376-378). The Respondent News-

Press filed other litigation accusing the Petitioner of participating in secret meetings in violation of the Sunshine law and after one year of publishing many damaging articles in this regard, dropped these allegations from said suit the day before trial (R 349-350). Furthermore, Respondent Flynn admitted that the litigation filed by the Respondent News-Press was frivolous and should be dropped, but indicated that the Respondent had other goals to achieve by instituting said litigation (R 350). Also, as was alleged in Petitioner's amended Complaint, for a period of a year and a half Respondent Melsek and Respondent Johnson conducted themselves in an abusive and a disruptive manner at Lee Memorial Hospital and at Hospital Board meetings in an effort to further the Respondents efforts to create an air of controversy surrounding the Petitioner

(R 354-355). Furthermore, as was alleged, the Respondents on more than one occasion offered to cease their attacks upon the Petitioner and his employers if his employers would terminate his employment (R 351-353). Finally, as a result of the air of controversy created by the Respondents and the significant economical losses resulting therefrom, the Petitioner's employers unlawfully terminated John Gadd's employment (R 356).

Very early in the process of this litigation, the Respondents raised, by way of their Motion To Dismiss, the original Complaint and a Memorandum Of Law offered in support thereof, the Federal Constitutional issue presented by the First and Fourteenth Amendments to the United States Constitution protection of the press (R 204-207, R 282-292). These same defenses were again raised by

the Respondents, by way of their Motion To Dismiss the Petitioner's Amended Complaint, Motion For Summary Judgment and a Memorandum of Law offered in support thereof (R 588-591, R 639-651) The Trial Court specifically made reference to this Federal Constitutional issue in its Order dated August 9, 1984, wherein it cited to "Gertz v. Welch, 418 U.S. 323, 41 L. Ed. 2d 789, 945 S. Ct. 2997 (1974) (R 338-342, A-3) and stated ... "In First Amendment terms, the malice is the intentional reporting of false material, not the intent to harm" (R 342, A-10) Furthermore, the trial court incorporated by reference, its rulings of law as delineated in its Order of August 1984, into its Order of January 31, 1985 (R 681, A-3).

The Petitioner herein filed a Notice of Appeal from the Trial Court's Order granting the Respondents Motion To

Dismiss and Motion For Summary Judgment, without leave to amend on February the 8th, 1985. The matter was briefed by counsel for both the Petitioner and the Respondents and on October 23rd, 1985, The Second District Court Of Appeals State of Florida, entertained oral argument and on November 13, 1985, issued its Opinion by way of a Per Curiam affirmance of the Trial Courts decision. Furthermore, the District Court Of Appeal of Florida, Second District issued its Mandate on December 4, 1985.

The effect of the Second District Court Of Appeals Per Curiam affirmance was to preclude any further appeal within the State Appellate system pursuant to the Florida Constitution Article 5, Section 3 and Florida Rules of Appellate Procedure, Rule 9.030. Inasmuch as the Trial Court's Order was with prejudice, it was a final appealable Order. Calhoun

V. Lee, 405 So.2d 1067 (Fla. 5th DCA 1981). Furthermore, due to the fact that the District Court of Appeals of Florida, Second District issued a Per Curiam affirmance there was no express decision by said court as to the Federal Constitutional question as is required by the 1980 Amendments to the Supreme Court of Florida Appellate Jurisdiction.[3]

REASONS FOR GRANTING THE WRIT

This case concerns the issue of the effect of the protection afforded to media defendants by this Honorable Courts ruling in New York Times Co. v. Sullivan, 376 U.S. 254, 11 L.Ed.2d 686, 84 S.Ct. 710 (1964), as it pertains to the First and Fourteenth Amendments application of

[3] See Article 5 Section 3 (b) Florida Constitution volume 26 West's Florida Statutes Annotated as amended.

freedom of the press, to state court actions for defamation. In granting Respondents' Motion To Dismiss, and Respondents' Motion For Summary Judgment, the Trial Court below held, and the Appellate Court below affirmed, that certain alleged libelous statements contained in Counts IV and VI of Petitioner's Amended Complaint were privileged because they were reports of judicial proceedings, and because there were no allegations that said proceedings were inaccurately reported. However, Petitioner would respectfully submit that the reporting of judicial proceedings is not absolutely protected according to either Florida or Federal case law Time, Inc. v. Firestone, 424 U.S. 448 47 L.Ed.2d 154, 96 S.Ct. 958 (1976). Although certain statements made in the course of judicial proceedings may be absolutely privileged, publications or

reports regarding said judicial proceedings are only subject to a qualified privilege and then only when the report is accurate, fair, impartial, and without malicious purpose. The Petitioner recognizes the significant importance placed upon the First and Fourteenth Amendment protections provided the press and embodied in the statement found in New York Times Co. v. Sullivan, Supra at page 270, wherein this Honorable Court stated;

> "the First and Fourteenth Amendments embody our profound national commitment to the principal that debate on public issues should be uninhibited, robust, and wide open, and that it may well include vehament, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

The Petitioner would submit that when the publication and reporting involved, stems from the use of deliberate and concocted falsehood an entirely different situation

arises. As was stated in Garrison v. Louisiana 379 U.S. 64, 13 L.Ed.2d 125, 85 S.Ct. 209 (1964) at 379 U.S. page 75;

> "the use of calculated falsehood, however, would put a different cast on the constitutional question. Although honest utterance, even if inaccurate, may further the fruitful exercise of the right of free speech, it does not follow that the lie, knowingly and deliberately published about a public official, should enjoy a like immunity."

This honorable court in Garrison further stated at page 75 that;

> "Calculated falsehood falls into that class of utterances which are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality..." citing Chaplinsky v. New Hampshire, 315 U.S. 568,86 L. Ed. 1031, 1035, 625 S. Ct. 766.

Thus the Petitioner would strongly submit that the reporting of a knowingly false statement or a false statement made with

reckless disregard of the truth does not enjoy constitutional protection.

The Petitioner's Amended Complaint contained allegations that the Respondents filed suit against the Petitioner, and that the Respondent Johnson falsely swore in a verified Petition For Mandamus that she was refused access to physician records by the Petitioner, when in fact she had failed to even speak with the Petitioner in regard to the matter. The Respondent News-Press then published an article stating as fact that Respondents had filed suit against the Petitioner for refusing to allow a reporter to inspect hospital records in violation of the Florida Public Records Act, that Respondent had exhausted its administrative remedies to obtain said records, and that the Petitioner had unreasonably, unequivocally, and categorically denied

the Respondents access to said records. The aforementioned factual statements, as reported by the Respondents, were known to be false by said Respondents in that they were concocted by said Respondents and contained in a judicial pleading of their own making. The Petitioner would submit that to allow Respondents to publish statements that they concocted and which they knew were false, based upon a lawsuit filed by said Respondents and thereby be protected by the qualified privilege and the protection provided to members of the media by the First and Fourteenth Amendments stretches the analysis contained in New York Times Co. v. Sullivan, Supra to an irrational point. Furthermore, such an interpretation would insulate not only the Respondents but any other member of the media from accountability for their knowingly publishing false statements.

As was stated in New York Times Co. v. Sullivan, Supra, at page 270;

> "... there is no constitutional value in false statements of fact. Neither the intentional lie or the careless error materially advances societies interest in an uninhibited, robust and wide open debate on public issues."

To allow such a ruling to stand would permit the filing of lawsuits based upon self manufactured falsehoods by the media without concern that such lawsuits were a sham. Furthermore, such a ruling allows the media to use the First and Fourteenth Amendments as a sword to destroy a persons reputation with the knowledge that they will be protected.

The Petitioner, in his Amended Complaint, alleged that the allegations contained in Counts IV and VI occurred with both actual malice, in a constitutional sense, as well as malice in fact. Furthermore, these allegations were not

simply conclusionary in nature but contained specific factual allegations as to either a concocted lie on the part of the Respondents, or the fact that the Respondents had within their possession knowledge that the statements were in fact false. As this Honorable Court indicated in St. Amant v. Thompson 390 U.S. 727, 20 L.Ed.2d 262, 88 S.Ct. 1323 (1968), if a story is fabricated by the Defendant or is the product of said Defendant's imagination and is based wholly on unverified information, statements of good faith would unlikely prove persuasive to the trier of fact in regard to the defense raised by the First Amendment to the United States Constitution. Quite to the contrary, Petitioner would suggest that the position put forth by Justice Fortas in the dissenting opinion in St. Amant v Thompson, Supra, should have led to a

contrary result herein. In St. Amant v. Thompson, on page 734, Justice Fortas stated;

> "the First Amendment is not so fragile that it requires us to immunize this kind of reckless, destructive invasion of the life, even of public officials, heedless of their interest and sensitivities. The First Amendment is not a shelter for the character assassinator, whether his action is heedless and reckless or deliberate."

The Petitioner would submit that in such instances as the case at bar, where actual malice in the constitutional sense is established by the allegations that Respondents published reports of judicial proceedings, knowing that said statements were in fact false, any qualified privilege was placed into question and such allegations took the publication in question far beyond the scope of the standards enunciated in New York Times Co. v. Sullivan, Supra.

Counts III, IV and VII of the Petitioner's Amended Complaint contained allegations of libel pertaining to publications which were allegedly statements made by certain public officials (R364-367, 368-371, 372-375). In granting Respondents Motion For Summary Judgment in regard to these Counts, the Trial Court below indicated that based upon the Affidavit and excerpts of the transcripts of depositions presented by the Respondents, there was a factual basis for the statements in question which was unrefuted and therefore the Motion should be granted (R 683).

The Petitioner's Amended Complaint alleged that not only were all of the statements referenced above false, but that the Respondents had specific knowledge of the falsity of such statements and that therefore such state-

ments were published with actual malice (R 364-365, 368-369, 372-374). The Petitioner would submit that where the false statements in question had been reported with actual knowledge of the falsity of such statements and in conscious disregard of the truth or falsity, such allegations if proven would defeat or exceed the constitutional protection set forth in New York Times Co. v. Sullivan 376 U.S. 254, 11 L. Ed.2d 686, 84 S. Ct. 710 (1964). Further, the Petitioner would submit that the media, such as the Respondents herein, should not be allowed to avail themselves of a constitutional protection when they publish statements by a public official, knowing that such statements are false, or having within their possession clear facts that indicate the falsity of said statements, yet they published the statements regardless of this knowledge.

As was stated in Garrison v. Louisiana 379 U.S. 64, 13 L.Ed.2d. 125, 85 S.Ct. 209 (1964), 379 U.S. at page 75 "... the knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection." The Petitioner should have been allowed to present to the trier of fact his proof that the Respondents had within their knowledge information which put them on notice of the falsity of the statements they reported to have been made by various public officials. To allow the Respondents to avoid responsibility for their actions herein would result in stretching the protection provided by New York Times Co. v. Sullivan, Supra far beyond not only the language, but the rational contained in said case far beyond the purposes of the First Amendment.

In dismissing Counts I and II of the Petitioner's Amended Complaint, the Trial Court did not directly or indirectly address the state law issues relating to conspiracy to torturously interfere with a contract and/or business/employment relationship, but based its ruling upon the theory that said Counts were in fact libel counts and fell prey to the same constitutional protections as discussed above. A review of the Trial Court's Order entered on August 9, 1984, clearly indicates that said Court summarily treated Counts I and II of the Amended Complaint as being Libel Counts and therefore subject to dismissal based upon the First Amendment considerations. The Petitioner would respectfully submit that the questions involved herein relating to state law and federal law were so interwoven that the trial court below incorrectly applied the Federal Constitutional

standards and summarily dismissed the Counts involved. Based upon such a scenario, jurisdiction would be appropriate for the Supreme Court to visit this issue and order reversal. Abie State Bank v. Bryan 282 U.S. 765, 75 L. Ed. 690 (1931).

CONCLUSION

The Petitioner would respectfully submit that inasmuch as the order issued below is final and not otherwise appealable or reviewable under the laws of the State of Florida, Certiorari would be appropriate Stanford v. Texas 379 U.S. 476, 13 L. Ed.2d 431, 85 S.Ct.506 (1965). Furthermore, inasmuch as the Federal issues raised herein relate to the law of privilege and protection provided media defendants by the First and Fourteenth Amendments of the United States Constitution as established by the standards of New York Times Co. v.

Sullivan, the issuance of a Writ of Certiorari in the instant matter would be appropriate Letter Carriers v. Austin 418 U.S. 264, 41 L.Ed.2d 745, 94 S.Ct. 2770 (1974). Petitioner would submit that, as in St. Amant v. Thompson 390 U.S. 727, 20 L.Ed.2d 262, 88 S.Ct. 1323 (1968) where the state court misapplied the actual malice standard and a Writ of Certiorari was granted and the matter reversed, in the instant matter Petitioner would submit that the Trial Court and the Appellate Court below misapplied the actual malice standard and therefore a Writ of Certiorari would be appropriate. Petitioner would submit that the presence of actual malice on the part of the Respondents would defeat the privilege and protections raised by the First Amendment and therefore warranting remand to the Trial Court below Barr v. Matteo 360 U.S. 564, 3 L.Ed.2d 1434, 79

S.Ct. 1335 (1959). Furthermore it is respectfully submitted that this matter clearly indicates the presence of a Federal issue warranting the issuance of the Writ of Certiorari.

Petitioner recognizes that the cases wherein the issues involved herein have been discussed generally emanate from a fact situation where a media defendant raises the First and Fourteenth Amendment as a shield. However, Petitioner would respectfully submit that Certiorari review by this Honorable Court would be appropriate when, as is the case in this matter, said constitutional protections have been incorrectly applied below to the detriment of a Plaintiff such as the Petitioner here.

RESPECTFULLY SUBMITTED, this 27th day of February, 1986.

THOMAS M. BRONDSTETTER, P.A.

By Thomas M Brondstetter

Thomas M. Brondstetter
Post Office Box 2397
Fort Myers, Fl. 33902
(813) 337-0330
Attorney for the Appellant

APPENDIX A

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

SECOND DISTRICT

JOHN R. GADD, Appellant, v. NEWS-PRESS PUBLISHING COMPANY, a Florida corporation, d/b/a FORT MYERS NEWS-PRESS; PAUL FLYNN, President and Publisher of News-Press Publishing Company; RONALD THORNBURG, Editor and Chief of Fort Myers News-Press; GEORGE R. BLAKE, Executive Editor of Fort Myers News-Press; BARBARA JOHNSON, LEROY MELSIK, JR.; and KAREN BAIR, Appellees.	)	Case No. 85-340

Opinion filed November 13, 1985.

Appeal from the Circuit Court for Lee County; Hugh E. Starnes, Judge.

Thomas M. Brondstetter of
Burnett & Brondstetter, P.A.,
Fort Myers, for Appellant.

Steven Carta of Simpson,
Henderson, Savage & Carta,
Fort Myers, for Appellees.

PER CURIAM.

Affirmed.

Ryder, C.J., CAMBELL and SCHOONOVER,
JJ., Concur.

MANDATE
From
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

STYLE: Gadd v. News-Press Publishing Co. et al.

COUNTY: Lee

APPELLATE CASE NO. 85-340

TRIAL COURT CASE NO. 83-5185CA-HES

This cause having been brought to this Court by appeal, and after due consideration, the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that further proceedings be had in said cause in accordance with the opinion of this Court and with the rules of procedure and laws of the State of Florida.

WITNESS, The Honorable Herboth S. Ryder, Chief Judge of the District Court of Appeal of the State of Florida, Second District, and the

seal of the said Court at

Lakeland, Florida on this day.

December 4, 1985

William A. Haddad

Clerk District
Court of Appeal of
Florida, Second
District

ORIGINAL TO: Hon. Charlie Green

c. Thomas M. Brondstetter
Steven Carta

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

JOHN R. GADD,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO.83-5185
	)	CA-HES
	)	
NEWS-PRESS PUBLISHING COMPANY, a Florida Corporation, d/b/a FORT MYERS NEWS-PRESS, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER DISMISSING COMPLAINT AND GRANTING MOTION FOR SUMMARY JUDGMENT

Upon Defendants' motion to dismiss and motion for summary judgment, the Court finds:

A. This Court, in its' order of August 8, 1984, made the substantial rulings of law which govern issues presently submitted.

B. The Amended Complaint contains the same general infirmities as those of the original Complaint, except as to

Counts III-VIII. As to those Counts, the Motion for Summary Judgment should be granted, because the attachments thereto demonstrate without dispute that there was a sufficient factual basis for the articles quoted to withstand a claim of libel by a public official.

C. As to the articles complained of, even where a particular passage is said to be "false", other portions of the article not challenged contain equally adverse statements on the same subject. The entire series of articles is punctuated by a Grand Jury presentment dated April 14, 1980, which reflected unfavorably on the hospital management. Finally, many of the articles are editorials and the passages complained of are opinion not subject of libel.

D. Attached is a brief synopsis of the findings on specific Counts.

E. The Plaintiff has not materially changed the thrust of the claims and allegations in the Amended Complaint. Two such massive attempts is sufficient leeway to state a cause of action if there is one, thus no further leave to amend should be granted.

It is, therefore,

ORDERED, as follows:

1. Counts I and II and Counts IX-XX are dismissed, with prejudice.

2. Summary Judgment is hereby granted on Counts III-VIII.

3. All Defendants as to all Counts shall go hence without day.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 31st day of January, 1985.

/s/ Hugh E. Starnes

Hugh E. Starnes
Circuit Judge

Copies Forwarded To:
Thomas M. Brondstetter, Esq.
Steven Carta, Esq.

this 31st day of January, 1985,

By:
Secretary to Judge Starnes

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

JOHN R. GADD, Plaintiff, vs. NEWS-PRESS PUBLISHING COMPANY, a Florida corp., d/b/a FORT MYERS NEWS-PRESS PAUL FLYNN, President and Publisher of News-Press Publishing Company; RONALD THORNBURG, Editor of Fort Myers News-Press; GEORGE R. BLAKE, Executive Editor of Fort Myers News-Press; BARBARA JOHNSON; LEROY MELSEK, JR., and KAREN BAIR	)	Case No. 85-5185-CA-HES

O R D E R

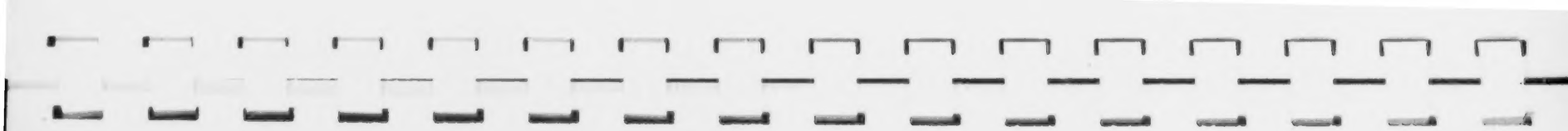
The Court has heard six hours of oral legal argument; has reviewed the Complaint, consisting of 28 Counts, 171 paragraphs, and 56 pages; has reviewed the 30 pages of written legal argument which cites over 75 appellate opinions as

legal authority; and has reviewed the 145 pages of exhibits attached to the Complaint in the form of copies of newspaper articles and editorials. I must confess this recitation is made in defense of the four month period which has elapsed since argument was completed, which is normally a grossly delayed period for making a ruling on a preliminary pleading issue in any of the other 1,700 cases submitted during the course of a year to each of the Circuit Judges in this County.

In this case the Plaintiff has alleged in Counts 1-4, causes of action based upon a series of articles he alleges were malicious attempts which culminated in his being fired from the position of Administrator of Lee Memorial Hospital, a public hospital, in contravention of an existing contract with several years yet to run. The

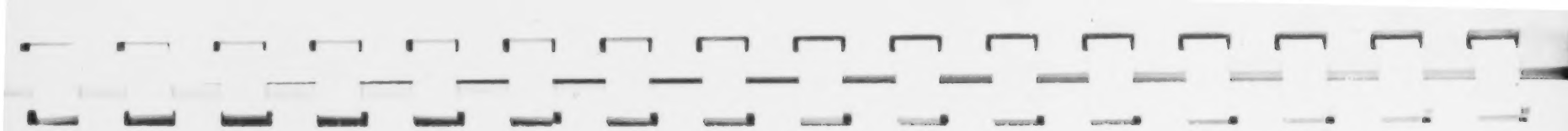
Plaintiff attempts to allege causes of action for intentional interference with a business relationship and a contractual right and conspiracy to commit those torts. The Defendants argue that these Counts fail to allege that any interference must be alleged to have been made in order to gain an advantage for Defendants. Plaintiff submits the elements set forth in Serafino v. Palm Terrace Apartments, Inc., 343 So2d 851 (Fla. 2nd DCA 1981) do not contain such a requirement. One of the elements is, however, that an unjustified interference is made. Plaintiff only broadly alleges that a series of articles gave the impression he was dishonest, without integrity, ruthless,and not to be trusted and that the public board fired him. These Counts fail to state a cause of action because they merely allege in summary that the Defendants published

articles unfavorable to the Plaintiff which influenced a public body to take action at a public meeting. There are no allegations of specific factual mistruths which were material to the issue and which caused the Board to take action which it would not have taken otherwise. Nor is there any specific allegation which would demonstrate how the articles by themselves were the sole and proximate cause of the action the Board took. The proximate cause is particularly significant because of every citizens' right to complain or furnish his or her opinion to a public body concerning the public business undertaken by such body. The real import of these Counts must lie in the tort of libel and appear to be merely attempts to circumvent spelling out the specific elements of a cause of action for libel. The only allegation is that the articles contained in over 100



pages of exhibits "falsely" created a certain impression.

The remaining 24 Counts allege specific articles and allege that specific parts of those articles are "false and defamatory." These allegations fail to state a cause of action because in each case the alleged "false statement" is either a statement of opinion and not actionable or because a fact attributed to another person is said to be false without stating that the other person failed to make the statement. The latter issue is significant because the allegations make it clear that the Plaintiff is both a public official and a public figure. He was the Administrator of a large public hospital, and was the center of a controversy regarding the running of the public hospital. Because of this status, the Defendants have the right to publish



statements made by other parties to a public dispute about the public official or figure. In the case of From v. Tallahassee Democrat, Inc., 400 So2d 52 (Fla. 1st DCA 1981), Judge Liles carefully sets out the general principles regarding media comments on public officials and figures. I have carefully reviewed the articles on which Counts 5-28 are based. To the extent any facts (as opposed to opinions) are stated to be false they are either a statement attributed to another participant in the dispute, or such a minor part of the article that the context would not be changed if the alleged false material were eliminated. Thus, the alleged false statements are not actionable.

There are also certain allegations (Counts 15 and 16) regarding alleged false statements made in judicial proceedings without an allegation that

the matters stated in the judicial proceedings were not fairly and accurately quoted. These allegations also fail because the accurate report of a judicial proceeding is privileged.

A schedule is attached to this Order detailing the findings of insufficiency as to the allegations of falsity.

It is, therefore

ORDERED, that the Complaint and each Count thereof is dismissed. The Plaintiff shall have thirty days to amend the Complaint, otherwise it shall stand dismissed with prejudice. Leave to amend is granted for the purpose of allowing Plaintiff, if he is able to do so in good faith, to amend to allege specifically false statements which would materially affect the accuracy and context of the articles if eliminated.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 8th day August 1984.

Hugh E. Starnes
Circuit Judge

Copies Furnished To:

Thomas M. Brondstetter, Attorney for Plaintiff

Steven Carta, Attorney for Defendants

SCHEDULE TO ORDER

(Odd numbered Counts contain the initial allegations of falsity and are repeated in the succeeding even numbered Count).

Paragraph 44:

(a) and (b) - opinion;

(c) - admits meetings and doesn't say not in violation of the "Sunshine" law (which would be an opinion anyway);

(d) - the mere adding of the "Official" to meetings does not change the context of the article.

Paragraph 60:

Does not negative that Board members made statements they did not know the matters alleged (the mere fact that such statement is made is reportable because of the public issue, Gertz v. Robert Welch, 41

Led 2d 789 (1974)).

Paragraph 71:

(a) - does not negative that Daniels made statement;

(b) - (d) - The article says a brief explanation was made. The alleged false statements would not change the context of the article if eliminated. The nuances between a "brief explanation" and unspecified "discussion" among Board members is not legally significant.

Paragraph 82:

(a) - The distinction between discussion with a staff member and negotiation is not legally significant in the overall context;

(b) - (d) and (f) - doesn't negative that the statements attributed were made;

(e) - no specificity as to alleged

"misquotation".

Paragraph 92:

No allegation that the attributed statements were not made.

Paragraph 102:

Report of judicial proceedings - privileged.

Paragraph 113:

(a), (b) and (c) - opinion - lengthy article in which a few statements are challenged; overall context remains the same.

Paragraph 124:

In an article detailing a grand jury investigation of the hospital, whether or not Plaintiff strode out "flanked by security guards" does not alter the context.

Paragraph 135:

(a) and (b) - opinion;

(c) - opinion, and small part of a longer article;

(d), (e) and (f) - opinion.

Paragraph 145:

Opinion.

Paragraph 155:

Opinion and small part of a long article.

Paragraph 165:

Opinion; and opinion of another.

The allegations of personal malicious motives of Defendants do not meet the test of "actual malice" which involves intentional or reckless reporting of false material. In First Amendment terms, the malice is the intentional reporting of false material, not the intent to harm.

CERTIFICATE OF FILING

I, Thomas M. Brondstetter, Attorney for John R. Gadd, Petitioner, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 11th day of February, 1986, the original Petition for Writ of Certiorari was deposited with the United States Post Office, and that the mailing of said Petition took place within the time permitted by the rules of The Supreme Court of The United States, and on the 27th day of February, 1986, the revised Petition for Writ of Certiorari was deposited with the United States Post Office.

Thomas M. Brondstetter

SWORN TO AND SUBSCRIBED before me this 27th day of February, 1986.

Janet Dickerson
Notary Public

My Commission Expires:

May 22, 1989

CERTIFICATE OF SERVICE

I, Thomas M. Brondstetter, Attorney for John R. Gadd, Petitioner, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 11th day of February, 1986, three (3) copies of the original Petition for Writ of Certiorari was mailed to Steve Carta, Attorney for the Respondents, and on the 27th day of February, 1986, three copies of the revised Petition for Writ of Certiorari was mailed to Steve Carta, attorney for the Respondents, at 1619 Jackson Street, Fort Myers, Florida.

Thomas M. Brondstetter

Thomas M. Brondstetter

SWORN TO AND SUBSCRIBED before me this 26th day of February, 1986.

Janet Nuckerson

Notary Public

My Commission Expires:

May 22, 1989